

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARTIN T. FRANCO, JR.,
TDCJ-CID NO.490569,
Petitioner,

vs.

DOUG DRETKE,
Defendant.

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CIVIL ACTION NO. H-06-154

OPINION ON DISMISSAL

Petitioner Martin T. Franco, Jr., a full-time administrative segregation/protective custody inmate, currently incarcerated in the Ramsey I Unit in Rosharon, Texas, has filed a document entitled “Petition Seeking Habeas Corpus Relief from Illegal Restraint.” (Docket Entry No.1). He has also filed an application to proceed *in forma pauperis* (Docket Entry No.2) and a motion to appoint counsel. (Docket Entry No.3).

In his Petition, Franco complains that he has been discriminated against by prison administrators and employees who “act as if nothing is wrong at [his] present improper prison conditions.” (Docket Entry No.1). Because it appears to the Court that Franco is attacking unconstitutional conditions of confinement and not the fact or duration of his prison sentence, his remedy is properly a complaint for alleged violations of his civil rights under 42 U.S.C. §1983. *Carson v. Johnson*, 112 F.3d 818, 820 (5th Cir. 1997); *see also Orellana v. Kyle*, 65 F.3d 29, 31 (5th Cir. 1995) (per curiam) (noting that if a “favorable determination” would not automatically entitle the prisoner to an accelerated release, the proper vehicle is a § 1983 suit).

Accordingly, the Clerk is ORDERED to correct the docket sheet to reflect the re-designation of this case as a complaint for violation of civil rights, designating petitioner Martin T. Franco, II as the Plaintiff and “Doug Dretke” as the Defendant.


Franco has filed an application to proceed *in forma pauperis*. (Docket Entry No.2). A prisoner, however, cannot file a civil action *in forma pauperis* in federal court if, on three or more prior occasions, while incarcerated, he brought an action that was dismissed for being frivolous, malicious, or failing to state a claim upon which relief may be granted. 28 U.S.C. § 1915(g). The only exception to revocation of an inmate’s privilege to proceed *in forma pauperis* is if he is in immediate danger of serious physical harm. *Banos v. O’Guin*, 144 F.3d 883, 884 (5th Cir. 1998). Franco states no facts to indicate that he is in immediate danger of serious physical harm.

Franco’s litigation history reveals that he falls within the provisions of section 1915(g). Franco has been sanctioned by three of the four federal district courts in Texas and barred from filing any further actions unless he has paid the filing fee in full and a United States magistrate judge has certified that the pleading was filed in good faith. *See Franco v. Brazoria County State Prison-Ramsey I Unit*, Civil Action G:04-715 (S.D. Tex. Dec. 14, 2004) (citations omitted); *Franco v. Mr. Williams*, Civil Action No.H-02-1171 (S.D. Tex. Apr. 4, 2002) (citations omitted). It is policy for the United States District Court for the Southern District of Texas to honor sanctions assessed by other district courts in Texas. Other suits filed by Franco in the Southern District have been dismissed pursuant to the sanctions imposed against him as a result of his abusive filing practices. *See Franco v. Texas Dep’t of Criminal Justice*, Civil Action No.H-99-625 (S.D. Tex. Aug. 20, 1999). Franco has not sought specific authorization for filing this action nor paid the filing fee of \$250.

After reviewing the pleadings filed by Franco and his litigation history, this Court has determined that it will enforce the sanctions of the sister courts. Plaintiff is DENIED authorization to prosecute this complaint and the complaint is DISMISSED, without prejudice, subject to plaintiff complying with all sanction orders and paying the entire filing fee. All pending motions are further DENIED. (Docket Entries No.2, No.3).

The Clerk will provide a copy of this Order to all parties, to the TDCJ - Office of the General Counsel, P.O. Box 13084, Capitol Station, Austin, TX 78711, Fax 512-936-2159; and to the Clerk of the United States District Court for the Eastern District of Texas, Tyler Division, 211 West Ferguson, Tyler, Texas, 75702, Attention: Betty Parker.

SIGNED at Houston, Texas, on February 1, 2006.

A handwritten signature in black ink, appearing to read "Melinda Harmon", written over a horizontal line.

MELINDA HARMON
UNITED STATES DISTRICT JUDGE